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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/575,925	05/01/2007	David Heather	930058-2006	5464
7590 Ronald R. Santucci Frommer Lawrence & Haug 745 Fifth Avenue New York, NY 10151				
EXAMINER				
PAINTER, BRANON C				
ART UNIT		PAPER NUMBER		
3635				
MAIL DATE		DELIVERY MODE		
04/25/2011		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/575,925

Applicant(s)

HEATHER ET AL.

Examiner

BRANON C. PAINTER

Art Unit

3635

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 February 2011.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,5-34 and 41-56 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,5-34 and 41-56 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Transposition of Patent Drawing Review (PTO-940)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB-08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Objections

1. Claims 1, 2, 5-34, and 49 are objected to because of the following informalities:
 - a. Claims 1, 2, and 5-34. The preamble is directed to a building module, but applicant has added connector elements to the claim, which are a separate structure. It is unclear whether applicant is claiming a combination of module and connectors, or if he is still attempting to claim a building module. Either the preamble should be changed, or the connector language should be changed to recite capabilities and not positive connection.
 - b. Claim 49, "is according to any of claims 1 to 40." This language was previously removed, and should be removed again to avoid multiple dependency issues.
 - c. Appropriate correction is required for all preceding objections.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
3. Claims 1-39, 45, 47, and 49 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
4. Claims 1, 39, and 49 are rendered vague and indefinite by the phrase "the fastening elements of each set including two fastening elements". The circuitous language

makes it unclear when the elements stop including two of themselves in each set.

The subset of fastening elements should be referred to by a different name, for instance "fasteners", as in "the fastening elements of each set including two fasteners". The examiner notes that applicant's amendments, while claiming a first and second set of fastener elements, do not clarify the fact that each set of fastener elements includes structures also labeled fastener elements. Correction is still required.

5. Claims 2-4, 20-22, 26-29, 45, and 47 are rendered vague and indefinite by reference to "fastening elements". It is unclear whether the set of fastening elements or the subset, as discussed above. For the purpose of this examination, the examiner presumes that all references to "fastening elements" refers to the set.
6. Claims 42 and 43 are rendered vague and indefinite by the phrases "approximately one...unit width". A claimed structure cannot be further limited by comparison to an unclaimed structure (in this case, the "given unit width"). For the purpose of this examination, the examiner presumes that any width may be considered a "given unit width".
7. Claims 2-39 are rejected as being indefinite for depending from an indefinite claim.

Claim Rejections - 35 USC § 102

8. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

9. **Claims 41-43, 45, 47, 50, and 53 are rejected under 35 U.S.C. 102(b) as being anticipated by DiMartino, Sr. (4,599,829).**
10. Regarding claim 41, DiMartino discloses a modular building having all of the applicant's claimed structure, including:
- a. A multiplicity of modules (11, Fig. 1) fastened and forming a portion of a building, each module having a generally cuboid shape with side, end, top, and bottom faces (11), being hollow and defining a space suitable for occupation by a person (Fig. 8, 9).
 - b. A plurality of fastening elements (67, 68, Fig. 3) capable of fastening modules together.
 - c. Each fastening element capable of receiving a connector having a plate, and first and second lugs extending in opposite directions therefrom.
11. Regarding claims 42 and 43, DiMartino discloses a majority of modules having a width and length of one times their given width and length (11).
12. Regarding claim 45, DiMartino discloses a foundation interface with a lower face (90, 93, Fig. 4) capable of resting on a foundation and an upper face carrying connector elements (108, 110) capable of engaging with fastening elements on the modules and capable of fastening thereto.
13. Regarding claim 47, DiMartino discloses an inter-story interface including upper and lower connecting elements (85, Fig. 7).
14. Regarding claim 50, DiMartino discloses modules fastened together with aligned openings in adjacent walls allowing traffic therethrough (130; Fig. 9).

15. Regarding claim 53, DiMartino discloses modules fastened side-by-side, end-to-end, and vertically (Fig. 1).

Claim Rejections - 35 USC § 103

16. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
17. **Claims 1-10, 17-21, 23, 24, 26, 30, and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Grogan (5,072,845) in view of Racy (3,752,511).**
18. Regarding claims 1 and 30:
- a. Grogan discloses a module (10, Fig. 1) including:
 - i. A generally cuboid shape having side, end, top, and bottom faces (10), fabricated from metal (c. 4, 42-44).
 - ii. The module being hollow and capable of human occupation (Fig. 1).
 - iii. Fastening elements (36, 34) capable of engagement by equipment.
 - iv. A first set (36 on left) and second set (36 on right) of fastening elements near the top, each set including two fastening elements spaced apart from one another at a spacing of about 2260 mm (c. 2, 10-15).
 - v. An overall exterior width of greater than 96 inches, and specifically for instance 102 inches (c. 4, 46-49).
 - vi. First (the four 36 on the left) and second (the four 63 on the right) sets including more than two fastening elements spaced across the top of

the module, each spaced from another by about 2260 mm (those on the front are spaced from those on the back by about 2260 (c. 2, 10-15).

- vii. Sets each including fastening elements at opposite side edges of the top (36).
- b. Grogan does not expressly disclose a width greater than 2700 mm (106.3 in.) [claim 1] or in the range of 2700 mm to 5000 mm [claim 30].
- c. It would have been an obvious matter of design choice to modify the modules of Grogan by giving them the claimed width, since applicant has not disclosed that such specific width solves any stated problem or is for any particular purpose and it appears that the module width of Grogan would perform equally well as a modular transportation device.
- d. The above combination teaches the claim limitations except for the specifically recited dimensions. Applicant has failed to establish a criticality for the explicitly claimed dimensions. In *Gardner v. TEC Systems, Inc.*, the Federal Circuit held that, where the only difference between the prior art and the claims was a recitation of relative dimensions of the claimed device and a device having the claimed relative dimensions would not perform differently than the prior art device, the claimed device was not patentably distinct from the prior art device. *Gardner v. TEC Systems, Inc.*, 725 F.2d 1338, 220 USPQ 777 (Fed. Cir. 1984), cert. denied, 469 U.S. 830, 225 USPQ 232 (1984) (citing MPEP 2144.04(IV)). From the above reasoning and for the

lack of unpredictable results, it would have been an obvious design choice to dimension the combination as specified in this claim.

- e. Furthermore, modifying the module of Grogan by giving it a width greater than 106.3 inches would have been beneficial, as it would have provided the storage module with greater internal space for cargo.
 - f. The examiner notes that it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *MPEP 2144.05*.
 - g. Grogan does not expressly disclose that his fastening elements are connected to other modules via a connector having a plate, a first lug, and a second lug, the lugs projecting from above and below the plate, respectively.
 - h. Racy discloses connector elements (16, Fig. 1) for connecting two adjacent modules, each element having a first (15) and second (15) lug extending from opposite ends of a plate (18).
 - i. At the time of the invention, it would have been obvious to one of ordinary skill in the art to connect adjacent modules of Grogan with connectors as taught by Racy, in order to stack containers without fear of toppling.
19. Regarding claim 2, Grogan/Racy as modified above disclose modules connected by a fastener, with Grogan further disclosing fastening elements symmetrically positioned on opposite sides of a central vertical plane (36).

20. Regarding claim 5, Grogan/Racy as modified above disclose modules connected by a fastener, with Grogan further disclosing first and second sets at opposite ends (Fig. 1).
21. Regarding claim 6, Grogan/Racy as modified above disclose modules connected by a fastener, with Grogan further disclosing elongate members in the region of each of the eight edges of the cuboid (30) and plural metal panels (12, 20) attached to at least some of the elongate members.
22. Regarding claims 7 and 8:
- a. Grogan/Racy as modified above further discloses metal panels on all side and one of the two end faces (c. 4, 42-44).
 - b. Grogan does not expressly disclose that the second end face, top, or bottom include metal panels.
 - c. It would have been an obvious matter of design choice to modify the second end face, top, and bottom by making them of metal as in the other module panels, since applicant has not disclosed that metal walls solves any stated problem or is for any particular purpose and it appears that the walls of undisclosed material would perform equally well in providing a structurally sound module. Further, such a modification would be beneficial as it would provide a module with uniform outer facing material.
23. Regarding claim 9, Grogan/Racy as modified above disclose modules connected by a fastener, with Grogan further disclosing at least some corrugated panels (26).

24. Regarding claim 10, Grogan/Racy as modified above disclose modules connected by a fastener, with Grogan further disclosing at least some composite panels including insulating material (c. 4, 42-46; panels can be made with metal and plywood in combination; plywood has some insulative ability, and is therefore considered an insulating material).
25. Regarding claims 17-19, Grogan/Racy as modified above disclose modules connected by a fastener, with Grogan further disclosing fastening elements (36) capable of fastening to an adjacent module in an alongside, end-to-end, or vertical relationship.
26. Regarding claim 20, Grogan/Racy as modified above disclose modules connected by a fastener, with Grogan further disclosing at least some fastening elements in the corner regions (36).
27. Regarding claim 21, Grogan/Racy as modified above disclose modules connected by a fastener, with Grogan further disclosing at least some fastening elements of hollow blocks with openings capable of accepting connector elements (36).
28. Regarding claim 23, Grogan/Racy as modified above disclose modules connected by a fastener, with the combination further teaching connector elements (16) fastened in the opening of the hollow blocks (36).
29. Regarding claim 24, Grogan/Racy as modified above disclose modules connected by a fastener, with the Racy further disclosing a connector capable of fastening via a fastener (27, Fig. 4) entering the hollow block through another opening and engaging the connector.

- a. The examiner notes that claim 24 is considered to be a product-by-process claim. The patentability of the product does not depend on its method of production. Determination of patentability is based on the product itself. See MPEP 2113. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process." *In re Thorpe*, 227 USPQ 964, 966 (Fed. Cir. 1985).
30. Regarding claim 26, Grogan/Racy as modified above disclose modules connected by a fastener, with Racy further disclosing a connector with first and second parts (15) capable of insertion into a fastener element opening.
31. Regarding claim 34, Grogan/Racy as modified above disclose modules connected by a fastener, with Grogan further disclosing a module exterior including a plurality of additional fastening elements (four 36 nearest middle) capable of interfacing with a roofing system (14, Fig. 1).
32. Regarding claims 54-56, the combination renders the claimed method steps obvious since such would be the logical manner of using the combination.
33. **Claims 11-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Grogan/Racy as applied to claims 1-10, 17-21, 23, 24, 26, 30, and 34 above, and further in view of Wiley, Jr. et al. (5,706,614).**
34. Regarding claims 11 and 13-16:
 - a. Grogan/Racy discloses a module as set forth above.

- b. Grogan/Racy does not expressly disclose a door opening in the side or a window opening in the end [claims 11-14], or kitchen or bathroom pods claims [15, 16].
 - c. Wiley discloses a module including a side with a door opening (11, Fig. 2) [claim 11] extending from a bottom region to a top region [claim 13] and a window opening (11) extending upwardly from a region partway up the face [claim 14]. Wiley further discloses a kitchen pod (19, Fig. 5) [claim 15] and a bathroom pod (20) [claim 16], each occupying a minor part of the interior volume.
 - d. At the time of the invention, it would have been obvious to a person of ordinary skill in the art to modify the module of Grogan by including window and door openings along a side, and bathroom and kitchen fixtures, as taught by Wiley, in order to allow the module to be entered and to allow it to be used as a human dwelling.
35. Regarding claim 12:
- a. Grogan/Racy/Wiley discloses a module as set forth above, with Wiley disclosing window openings along a side (11).
 - b. Grogan/Racy/Wiley does not expressly disclose window openings along a module end.
 - c. It would have been an obvious matter of design choice to modify the module of Grogan/Racy/Wiley by providing a window opening along an end of the module, since applicant has not disclosed that having an opening along the

end solves any stated problem or is for any particular purpose and it appears that an opening along the side would perform equally well as a window opening. Further, such a modification would be beneficial as it would provide the habitant a view outside the end walls and provide the opportunity for greater circulation.

36. Claims 1, 21, 27, and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Grogan in view of Morris et al. (3,722,714).

- a. Grogan discloses a module as set forth above with respect to claims 1 and 21.
- b. Grogan does not expressly disclose that his fastening elements are connected to other modules via a connector having a plate, a first lug, and a second lug, the lugs projecting from above and below the plate, respectively [claim 1], the connector element having four [claim 27] or eight [claim 28] parts capable of simultaneous insertion in adjacent modules.
- c. Morris discloses connector elements (53) having a plate (29) and two opposing lugs (39, 40), with eight (Figs. 2, 3, 7) parts insertable into eight different fastening element apertures of adjacent modules (Fig. 3).
- d. At the time of the invention, it would have been obvious to a person of ordinary skill in the art to modify the module of Grogan by connecting it to adjacent modules using a connector element as taught by Morris, in order to

prevent the modules from moving relative one another and provide a strong connection therebetween.

37. Claim 29 is rejected under 35 U.S.C. 103(a) as being unpatentable over Grogan/Racy as applied to claims 1-10, 17-21, 23, 24, 26, 30, and 34 above, and further in view of Robishaw et al. (EP0175446).

- a. Grogan/Racy discloses a module as set forth above.
- b. Grogan/Racy does not expressly disclose additional fastening elements located partway along the bottom [claim 29] end edges.
- c. Robishaw discloses additional fastening elements located partway along the bottom (20', 22', Fig. 1) [claim 29] end edges.
- d. At the time of the invention, it would have been obvious to a person of ordinary skill in the art to modify the module of Grogan by adding additional fastening elements along the length of the end edges as taught by Robishaw, in order to provide more connection points along adjacent ends and ensure a stronger connection between adjacent modules at their meeting ends.

38. Claims 31-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Grogan/Racy as applied to claims 1-10, 17-21, 23, 24, 26, 30, and 34 above, and further in view of Austin, Jr. (6,381,977).

- a. Grogan/Racy discloses a module as set forth above.

- b. Grogan does not expressly disclose module lengths of 6000-6100mm [claim 31], 12100-12300mm [claim 32], or 13600-13800mm [claim 33].
- c. Austin discloses that modular storage containers are typically made in lengths of 20ft [claim 31], 40ft [claim 32], and 45ft [claim 33] (c. 1, 10-13).
- d. At the time of the invention, it would have been obvious to a person of ordinary skill in the art to modify the module length of Grogan by making it 20, 40, or 45 ft as taught by Austin, in order to adhere to industry standards.
- e. The examiner notes that where the only difference between the prior art and the claims is a recitation of relative dimensions of the claimed device and a device having the claimed relative dimensions would not perform differently than the prior art device, the claimed device is not patentably distinct from the prior art device. *MPEP 2144.04*.

39. Claim 44 is rejected under 35 U.S.C. 103(a) as being unpatentable over DiMartino, Sr. (4,599,829).

- a. DiMartino discloses a modular building as set forth above.
- b. DiMartino does not expressly disclose that one of his modules has a length less than one fifth of the length of his longest module.
- c. It would have been an obvious matter of design choice to modify the length of one of DiMartino's modules by giving it the length claimed, since applicant has not disclosed that such specific length solves any stated problem or is for

any particular purpose and it appears that the length of the modules of DiMartino would perform equally well as modular building blocks.

- d. The above combination teaches the claim limitations except for the specifically recited dimensions. Applicant has failed to establish a criticality for the explicitly claimed dimensions. In *Gardner v. TEC Systems, Inc.*, the Federal Circuit held that, where the only difference between the prior art and the claims was a recitation of relative dimensions of the claimed device and a device having the claimed relative dimensions would not perform differently than the prior art device, the claimed device was not patentably distinct from the prior art device. *Gardner v. TEC Systems, Inc.*, 725 F.2d 1338, 220 USPQ 777 (Fed. Cir. 1984), cert. denied, 469 U.S. 830, 225 USPQ 232 (1984) (citing MPEP 2144.04(IV)). From the above reasoning and for the lack of unpredictable results, it would have been an obvious design choice to dimension the combination as specified in this claim.
- e. Furthermore, modifying the module of DiMartino by giving it a length less than one fifth of the length of his longest module would have been beneficial, as it would have provided his building system with modules of different sizes, allowing for more combinations thereof.
- f. The examiner notes that it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *MPEP 2144.05*.

40. Claim 46 is rejected under 35 U.S.C. 103(a) as being unpatentable over DiMartino, Sr. (4,599,829) in view of Payne et al. (6,155,747).

- a. DiMartino discloses a modular building as set forth above, including a foundation interface (Fig. 4) whose upper face carries connector elements.
- b. DiMartino does not expressly disclose that the foundation interface includes multiple connectors spaced in a rectangular ring.
- c. Payne discloses that foundation interface connections can be formed in a rectangular ring with connectors at each corner (348, 360, Fig. 17) and alignment structure forming the ring (340, 334, 344, 336).
- d. At the time of the invention, it would have been obvious to a person of ordinary skill in the art to modify the connectors of DiMartino by placing them in a rectangular ring mounting structure including alignment beams as taught by Payne, in order to ensure each module is placed in the proper position on the foundation and to align adjacent members.

41. Claim 48 is rejected under 35 U.S.C. 103(a) as being unpatentable over DiMartino, Sr. (4,599,829) in view of Tomkins et al. (6,877,939).

- a. DiMartino discloses a modular building as set forth above, including a inter-story interface (Fig. 7) whose faces carry connector elements.
- b. DiMartino does not expressly disclose that the inter-story interface includes multiple connectors spaced in a rectangular ring.

- c. Tomkins discloses that inter-story interface connections (10, Fig. 4) can be formed in a rectangular ring with connectors spaced therealong (13) and connected by a ring structure (11, 12, Fig. 1), and also teaches connectors with two male elements (Fig. 8A).
- d. At the time of the invention, it would have been obvious to a person of ordinary skill in the art to modify the connectors of DiMartino by placing them in a rectangular ring mounting structure as taught by Tomkins, in order to ensure each module is connected to the module below and to align adjacent members.

42. Claims 1, 21-23, 25, 26, and 49 are rejected under 35 U.S.C. 103(a) as being unpatentable over Grogan (5,072,845) in view of DiMartino, Sr. (4,599,829).

43. Regarding claims 1, 21, and 22:

- a. Grogan discloses a module as set forth above with respect to claims 1 and 21, including fastening elements (36).
- b. Grogan does not expressly disclose that his fastening elements are connected to other modules via a connector having a plate, a first lug, and a second lug, the lugs projecting from above and below the plate, respectively [claim 1], and does not appear to expressly disclose that the fastening elements have openings in each of their top, side, and end faces [claim 22].

- c. DiMartino discloses connector elements (85) having a plate (86) and two opposing lugs (112 on either end), and that it is notoriously well-known for shipping modules to have three such openings (Fig. 12).
 - d. At the time of the invention, it would have been obvious to a person of ordinary skill in the art to modify the fastening elements of Grogan by providing them with connectors and with three openings in their faces as taught by DiMartino, in order to allow handling and connecting elements to engage them along either their end, side, or top faces.
44. Regarding claims 23, 25, and 26:
- a. Grogan/DiMartino discloses a module with multi-hole fastening elements as set forth above.
 - b. Grogan does not expressly disclose connector elements capable of fastening into one of the fastener openings [claim 23] through the use of threaded fasteners engaging the connector elements [claim 25], or connectors having two parts capable of insertion into openings of facing fastener elements [claim 26].
 - c. DiMartino discloses connector elements (85, Fig. 7) capable of fastening into one of the fastener openings (Fig. 7) [claim 23] through the use of threaded fasteners (88) engaging the connector elements [claim 25], or connectors having two parts capable of insertion into openings of facing fastener elements (Fig. 7) [claim 26].

- d. At the time of the invention, it would have been obvious to a person of ordinary skill in the art to modify the module of Grogan by connecting it to adjacent modules using connector elements as taught by DiMartino, in order to prevent the modules from moving relative one another and provide a strong connection therebetween.

45. Regarding claim 49:

- a. Grogan discloses a module as set forth above.
- b. Grogan does not expressly disclose a multiplicity of modules fastened together to form a building.
- c. DiMartino discloses that modules like those of Grogan may be used in multiples and connected together to form buildings (Fig. 1).
- d. At the time of the invention, it would have been obvious to a person of ordinary skill in the art to provide multiples of the modules of Grogan and connecting them together to form a building as taught by DiMartino, in order to provide a multi-story building of greater width and length that is easily transportable.

46. Claims 51 and 52 are rejected under 35 U.S.C. 103(a) as being unpatentable over DiMartino, Sr. (4,599,829) in view of Morris et al. (3,722,714).

- a. DiMartino discloses a modular building as set forth above, wherein the modules are connected in a top-to-bottom relationship and are placed in side-by-side and end-to-end adjacent configurations (Fig. 1).

- b. DiMartino does not expressly disclose connectors extending in these directions.
- c. Morris discloses that containers can be used to attach modules either end-to-end or side-by-side (53, Fig. 2).
- d. At the time of the invention, it would have been obvious to a person of ordinary skill in the art to modify the building of DiMartino by adding connectors between end-to-end and side-to-side modules as taught by Morris, in order to ensure a more secure connection between all adjacent modules.

Response to Arguments

- 47. Applicant's arguments filed 02/28/11 have been fully considered but they are not persuasive.
- 48. Applicant's amendments still fail to overcome the 112 rejection, as they do not resolve the issue that each set of fastener elements includes structures also labeled fastener elements.
- 49. Applicant's arguments with respect to the 102 rejection of Grogan have been considered but are moot in view of the new ground(s) of rejection.
- 50. Applicant argues that the previous rejection fails to meet some of the newly added claim language. However, the current rejection meets all claim limitations as set forth above.

51. Applicant argues that the DiMartino containers cannot be resized, and such resizing would not be an obvious design choice. However, such a resizing would be obvious, as applicant has provided no criticality for the specific dimensions claimed in his specification, and because making a container larger would be an obvious way to provide it with more storage capacity.
52. Applicant argues that the sizing of Grogan is not an obvious design choice. However, such a resizing would be obvious, as applicant has provided no criticality for the specific dimensions claimed in his specification, and because making a container larger would be an obvious way to provide it with more storage capacity.

Conclusion

53. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).
54. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the

mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to BRANON C. PAINTER whose telephone number is (571)270-3110. The examiner can normally be reached on Mon-Fri 7:30AM-5:00PM, alternate Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eileen Lillis can be reached on (571)272-6928. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Branon Painter
Examiner
Art Unit 3633

/Basil Katcheves/
Primary Examiner, Art Unit 3635

